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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

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8 CARRINGTON MORTGAGE SERVICES,
9 LLC

Plaintiff,

10 v.

11 TAPESTRY AT TOWN CENTER
12 HOMEOWNERS ASSOCIATION;
13 TERRA WEST COLLECTIONS GROUP LLC;
SFR INVESTMENTS POOL 1, LLC

14 Defendants.
15

Case No. 2:17-cv-01047-RFB-BNW

ORDER

16 **I. INTRODUCTION**

17 Before the Court are Plaintiff Carrington Mortgage Services's ("Carrington") Motion for
18 Partial Reconsideration and Defendant SFR Investments Pool 1, LLC's ("SFR") Countermotion
19 for Reconsideration. ECF Nos. 77, 79. For the following reasons, the Court denies both motions.

20 **II. PROCEDURAL BACKGROUND**

21 Carrington filed its lawsuit on April 13, 2017. ECF No. 1. The complaint sought
22 declaratory relief that a nonjudicial foreclosure sale conducted under Chapter 116 of the Nevada
23 Revised Statutes ("NRS") did not extinguish its deed of trust on a Las Vegas property. Id. On
24 March 31, 2019, the Court issued an order granting Carrington Mortgage Services, LLC's Motion
25 for Summary Judgment in part on the grounds that Carrington's predecessor-in-interest's tender
26 preserved its deed of trust. ECF No. 69. The order also granted SFR's motion for summary
27 judgment in part and denied it in part. Id. Defendant SFR appealed the order on April 30, 2019.
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1 ECF No. 79. SFR voluntarily dismissed the appeal on May 13, 2019. ECF No. 74. Carrington
2 moved for partial reconsideration on May 24, 2019. ECF No. 77. SFR responded and Carrington
3 replied. ECF Nos. 78, 85. SFR filed a countermotion for reconsideration of the Court's order on
4 June 7, 2019. ECF No. 79. Defendant Tapestry at Town Center Homeowners Association joined
5 the motion. ECF No. 81. Carrington responded, and SFR replied. ECF Nos. 86, 87.

7 **III. LEGAL STANDARD**

8 Rule 59(e) of the Federal Rules of Civil Procedure allows parties to move to alter or
9 amend a judgment within twenty-eight days of entry of the judgment.¹ Fed. R. Civ. P. 59(e). Rule
10 60 of the Federal Rules of Civil Procedure also allows the Court to correct clerical mistakes or a
11 mistake arising from oversight or omission whenever one is found, sua sponte, or on a party's
12 motion, and to relieve parties from a final judgment "for any other reason that justifies relief."
13 Fed. R. Civ. P. 60(a); (b)(6). "Whether or not to grant reconsideration is committed to the sound
14 discretion of the court." Navajo Nation v. Confederated Tribes and Bands of the Yakama Indian
15 Nation, 331 F.3d 1041, 1046 (9th Cir. 2003). However, "a motion for reconsideration should not
16 be granted, absent highly unusual circumstances, unless the district court is presented with newly
17 discovered evidence, committed clear error, or if there is an intervening change in the controlling
18 law." Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir.
19 2009) (internal quotation and citation omitted). A motion for reconsideration "may *not* be used to
20 raise arguments or present evidence for the first time when they could reasonably have been raised
21 earlier in the litigation." Id. (internal quotation and citation omitted). Moreover, "[m]otions for

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26 ¹ The Court's order was entered March 31, 2019, and the parties filed their motions for
27 reconsideration on May 24, 2019 and June 7, 2019, respectively—way past the twenty-eight day
28 deadline. However, the Court construes the motions as Rule 60(b) motions, and accordingly finds
that they are timely filed. See Am. Ironworks & Erectors, Inc. v. N. Am. Const. Corp., 248 F.3d
892, 898–99 (9th Cir. 2001) (untimely filed motion for reconsideration is treated as Rule 60(b)
motion for relief from a judgment or order when untimely filed).

1 reconsideration are disfavored. A movant must not repeat arguments already presented unless (and
2 only to the extent) necessary to explain controlling, intervening law or to argue new facts. A
3 movant who repeats arguments will be subject to appropriate sanctions.” LR 59-1.
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5 **IV. DISCUSSION**

6 In the Court’s March 31, 2019 Order, the Court found that while there was no genuine
7 dispute of material fact as to whether or not Carrington’s predecessor-in-interest tendered payment
8 to the HOA trustee, there was a genuine issue of fact as to whether or not SFR was a bona fide
9 purchaser. Accordingly, the Court granted and denied both Carrington and SFR’s motions for
10 summary judgment in part. Carrington files a motion for partial reconsideration of the Court’s
11 determination that whether SFR was a bona fide purchaser was a question of fact for trial.
12

13 The Court corrects its prior order to the extent that it implied that whether SFR was a bona
14 fide purchaser is a material fact. The Nevada Supreme Court, the Ninth Circuit, and this Court
15 have all held that whether the buyer was a bona fide purchaser is irrelevant to the analysis. Bank
16 of America, N.A. v. SFR Invs. Pool 1, LLC (“Diamond Spur”), 427 P.3d 113, 121 (Nev. 2018)
17 (“A party’s status as a BFP is irrelevant when a defect in the foreclosure proceeding renders the
18 sale void.”); Nationstar Mortg. LLC v. Saticoy Bay LLC Series 8920 El Diablo, 788 F.App’x 423
19 (9th Cir. 2019) (“Under Diamond Spur, Saticoy Bay’s purported status as a bona fide purchaser is
20 therefore “irrelevant.”); Bank of New York Mellon v. Willow Creek Community Ass’n, No. 2:16-
21 cv-00717-RFB-BNW, 2019 WL 4677009 at * 1, * 5 (D. Nev. Sept 25, 2019) (“The Court again
22 relies on the Nevada Supreme Court’s holding in Diamond Spur that a party’s status as a bona fide
23 purchaser is irrelevant when a defect in a foreclosure proceeding renders the sale void.”).
24

25 Accordingly, the Court clarifies that tender by Carrington’s predecessor-in-interest
26 operated to preserve its deed of trust on the property.
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1 The Court rejects SFR's motion for reconsideration of the Court's ruling on the applicable
2 statute of limitations and Carrington's standing to enforce the deed of trust. SFR has identified no
3 intervening controlling authority on either question, and therefore the Court declines to revisit
4 either issue as it does not find that the Court committed clear legal error.
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6 **V. CONCLUSION**

7 **IT IS ORDERED** that Plaintiff Carrington Mortgage Services LLC's Motion for Partial
8 Reconsideration (ECF No. 77) is GRANTED. The Court declares that Defendant SFR Investments
9 Pool 1, LLC acquired the property subject to the deed of trust.
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11 **IT IS FURTHER ORDERED** that the certificate of cash deposit (ECF No. 18), plus any
12 accrued interest, be returned to its Legal Owner.

13 **IT IS FURTHER ORDERED** that Defendant SFR Investments Pool 1, LLC
14 Countermotion for Reconsideration (ECF No. 79) is DENIED.

15 **IT IS FURTHER ORDERED** that the notice of lis pendens (ECF No. 2) is expunged.

16 The Clerk of the Court is instructed to enter judgment in favor of Plaintiff Carrington
17 Mortgage Services LLC and to close the case.
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19 DATED March 24, 2020.

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22 **RICHARD F. BOULWARE, II**
23 **UNITED STATES DISTRICT JUDGE**
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